

Law Office of Nora J. Chorover

nchorover@choroverlaw.com

November 30, 2015

BY CERTIFIED MAIL

Paul Routhier, President & Registered Agent
J.P. Routhier and Sons Recycling Corporation
256 Ayer Road
Littleton, MA 01460
Certified Mail #: 7014 3490 0000 7429 8381

RECEIVED
DEC - 2 2015
OFFICE OF THE REGIONAL ADMINISTRATOR

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance
with Federal Clean Water Act's Industrial Stormwater Discharge Requirements:
Berkshire Boulevard and Willow Road, Ayer, Massachusetts

Dear Mr. Routhier,

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts. The federal Clean Water Act (the "Act") contains a "citizen suit" provision that gives an organization such as Clean Water Action the right, under certain circumstances, to enforce the requirements of the Act in the interest of its members. Stormwater is a significant source of water quality problems in the nation's waters. For this reason, Clean Water Action has a program of investigating and enforcing compliance with the Act's stormwater requirements state-wide. This program advances the organization's mission of improving water quality by achieving more wide-spread compliance with the Act's stormwater requirements in Massachusetts.

According to our research, J.P. Routhier and Sons operates a tire recycling facility at Berkshire Boulevard and Willow Road in Ayer, Massachusetts (the "Facility"). Warehousing and land transportation activities are also carried out at the property. During rain events, polluted stormwater runs off of the Facility into adjacent wetland areas, including but not limited to wetlands on the northwest corner of the Facility.

As a company engaged in the practice of scrap and waste recycling, J.P. Routhier is required to comply with the Act's stormwater requirements, including the requirement to apply for and comply with the terms of EPA's Multi-Sector General Permit for Stormwater Discharges (the "Permit"). However, J.P. Routhier has been operating the Facility without obtaining coverage under this permit and the company is not currently complying with the Permit's terms.

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We are writing to notify you that Clean Water Action is invoking the citizen suit provision of the Act to address these violations. This formal 60-day notice of intent to sue is being served pursuant to 40 C.F.R., Part 135. The citizen suit provision allows Clean Water Action to bring a civil action against J.P. Routhier in the United States District Court for the District of Massachusetts. Clean Water Action will ask the Court to ensure J.P. Routhier's future compliance with the Act, assess civil penalties in an appropriate amount,¹ award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director
Clean Water Action
88 Broad Street, Lower Level
Boston, MA 02110
(617) 338-8131
(617) 335-6449 (fax)

Counsel for Clean Water Action in this case is:
Nora J. Chorover
Law Office of Nora J. Chorover
11 Green Street
Boston, MA 02130
617-477-3550

¹ The Statute authorizes the Court to assess a penalty of *up to* \$37,500 a day for each violation. See 33 U.S.C. § 1319(d) and 78 Fed. Reg. 66647 (Nov. 6, 2013).

J.P. ROUTHIER'S VIOLATIONS AND DATES OF VIOLATIONS

A. THE REQUIREMENTS OF THE ACT

1. Pollutant Discharges without a Permit are Illegal.

The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by the federal Environmental Protection Agency ("EPA") under the National Discharge Elimination System ("NPDES").

2. Scrap Recycling and Waste Recycling Facilities Must Comply with EPA's General Industrial Stormwater Permit.

In order to minimize polluted stormwater discharges from certain categories of industrial facilities, EPA has issued a general industrial stormwater permit (the "Permit").² Scrap and waste recycling facilities are subject to the requirements of this Permit.³ Scrap and waste recycling facilities that carry on other types of activities also subject to the requirements of the Permit must also comply with any sector-specific requirements for such co-located industrial activity.⁴

3. Scrap Recycling and Waste Recycling Facilities Must Develop and Implement a Stormwater Pollution Prevention Plan ("SWPPP").

An owner or operator (hereafter referred to as "operator") of a facility subject to the requirements of the Permit must prepare a SWPPP before being authorized to discharge under the Permit.⁵ The SWPPP must be "prepared in accordance with good engineering practices"⁶ and, among other things,

- identify potential sources of pollution at the facility;⁷
- describe and ensure implementation of control measures that are technologically available and economically practicable and achievable in light of best industry practice;⁸ and

² The General Permit was first issued in 1995 and most recently reissued in June 2015 in substantially similar form. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008), and reissued in 2015 pursuant to 80 Fed. Reg. 34403 (June 4, 2015).

³ Permit, Appendix D, pg. D-4.

⁴ Permit, pg. 123.

⁵ Permit, Section 5 and Section 8.N.4.

⁶ Permit, pg. 30 (referring to "control measures").

⁷ Permit, pgs. 32-33.

⁸ Permit, pgs. 14, 33-34.

- set forth specific procedures to assure compliance with effluent limitations and monitoring/inspection requirements of the Permit.⁹

4. Scrap Recycling and Waste Recycling Facilities Must Submit to EPA a Notice of Intent to be covered by the Permit By EPA's Established Deadlines.

After completing and implementing its SWPPP,¹⁰ a scrap recycling and waste recycling facility must submit to EPA a Notice of Intent ("NOI") to be covered by the Permit. EPA's initial NOI filing deadline was January 1, 1996.¹¹ When the agency reissued the Permit in 2015, it reminded operators of subject facilities that unpermitted stormwater discharges are "unauthorized," and ordered all subject facilities to file an NOI for the 2015 permit by September 2, 2015.¹²

5. Scrap Recycling and Waste Recycling Facilities Must Comply with the Terms of the Permit.

The Permit requires scrap recycling and waste recycling facilities to, among other things:

- a. ensure that stormwater discharges meet applicable water quality standards;¹³
- b. reduce and/or eliminate pollutants to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice;¹⁴
- c. implement specific best management practices set forth in the Permit for scrap recycling and waste recycling facilities;¹⁵
- d. monitor stormwater discharges for compliance with benchmark limitations applicable to scrap recycling and waste recycling facilities;¹⁶

⁹ Permit, pgs. 34-36.

¹⁰ Permit, pg. 30 ("You must prepare a SWPPP for your facility before submitting your Notice of Intent (NOI) for permit coverage.").

¹¹ See 60 Fed. Reg. 50804.

¹² Permit, pg. 10 (unpermitted discharges from the facility will continue to be "unauthorized" unless allowed under the Permit). See also 40 C.F.R. §122.28(b)(2)(i) ("A discharger ... who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge").

¹³ Permit, pg. 20 ("Your discharge must be controlled as necessary to meet applicable water quality standards.").

¹⁴ Permit, pg. 14.

¹⁵ Permit, pg. 125-129.

¹⁶ Permit, pg. 129-130. J.P. Routhier was required to monitor for Chemical Oxygen Demand ("COD"), Total Suspended Solids ("TSS"), aluminum, copper, iron, lead, and zinc for compliance with benchmark limits.

- e. perform regular facility and stormwater inspections;¹⁷
- f. report on monitoring and inspections to EPA by specified deadlines;¹⁸ and
- g. comply with those permit conditions applicable to permittees in Massachusetts, including but not limited to
 - i. submission of monitoring results to the Regional Office of the Massachusetts Department of Environmental Protection (“MADEP”) for the MADEP Region in which the Facility is located, where the monitoring identifies exceedences of any effluent limits or benchmarks for which monitoring is required under the Permit, and
 - ii. where effluent limits and/or benchmarks are exceeded, submission to the MADEP Regional Office of any follow-up monitoring and a description of the corrective actions required and undertaken to meet those effluent limits and/or benchmarks.¹⁹

B. J.P. ROUTHIER’S VIOLATIONS AND DATES OF VIOLATIONS

Clean Water Action’s complaint will address violations that occurred during the last five years.

**1. Violations that Have Occurred on Specific Days During the Last Five Years:
Discharges of Stormwater from the Facility Without a NPDES permit**

J.P. Routhier’s violations of the Act’s prohibition against unpermitted discharges occurred and are continuing to occur at the Facility each time rain, snow melt or another factor results in industrial stormwater discharges from the Facility to waters of the United States. The days during the last five years on which rain, snow melt or other factors caused stormwater to be discharged from the Facility to waters of the United States are listed on Exhibit A hereto. Clean Water Action’s complaint will also address any non-permitted stormwater discharge violations that occurred or occur between the last date listed on Exhibit A, and the date on which the complaint is filed.

¹⁷ Permit, pgs. 22-26.

¹⁸ Permit, pgs. 47-51.

¹⁹ Permit, pgs. 170-171.

2. Violations that Have Occurred on Each Day During the Last Five Years:²⁰

The following violations of the Act are set forth on Exhibit B. These violations have occurred on a daily basis for the last five years and they are continuing to occur.

- a. failure to prepare and implement a SWPPP;
- b. failure to submit a NOI to be covered by the Permit;
- c. failure to ensure that stormwater discharges from the Facility will not cause or have the reasonable potential to cause or contribute to a violation of water quality standards;
- d. failure to implement adequate control measures;
- e. failure to monitor for compliance with benchmark limitations;
- f. failure to report monitoring results for the Facility to EPA by the specific deadlines;
- g. failure to perform annual comprehensive site inspections, and
- h. failure to complete and submit annual reports.

To the extent that J.P. Routhier is carrying out any other industrial activity at the Facility which is also subject to the requirements of the Permit, then J.P. Routhier's failure to comply with the Permit requirements for such co-located activities is also a violation of the Clean Water Act.

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. As discussed above, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation should you have your attorney contact us sufficiently in advance of the end of the 60-day notice period.

Sincerely,



Nora J. Chorover
Attorney for
CLEAN WATER ACTION

²⁰ Clean Water Action believes that the violations set forth in this Section B.2 have occurred on each day of the last five years, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through November 3, 2015 are set forth on Exhibit A hereto. The complaint, when filed, will set forth additional rain dates since November 3, 2015.

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cc: (by certified mail)

Curt Spalding, Regional Administrator
EPA New England, Region 1,
5 Post Office Square, Ste. 100
Boston MA 02109
Certified Mail # 7013 2250 0000 2096 4313

Gina McCarthy, Administrator
US EPA Headquarters, Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 2046
Certified Mail # 7014 3490 0000 7429 7957

Martin Suuberg, Commissioner
Massachusetts Department of
Environmental Protection
One Winter Street
Boston, MA 02108
Certified Mail # 7014 3490 0000 7429 7940

EXHIBIT A

DAYS BETWEEN DECEMBER 1, 2010 AND NOVEMBER 27, 2015 ON WHICH STORMWATER FROM FACILITY DISCHARGED TO WATERS OF THE UNITED STATES

December 2010:	1, 12, 26
January 2011:	12, 18, 21, 27
February 2011:	1, 2, 5, 8, 25, 27, 28
March 2011:	6, 7, 10, 11, 16, 21, 30
April 2011:	1, 4, 13, 16, 17, 19, 23, 28
May 2011:	4, 15, 16, 17, 18, 19, 23
June 2011:	9, 11, 12, 13, 17, 22, 23, 24, 25, 28
July 2011:	8, 23, 25, 29
August 2011:	7, 8, 9, 15, 21, 25, 27, 28
September 2011:	6, 7, 8, 22, 23, 24, 28, 29
October 2011:	1, 4, 13, 14, 19, 20, 27
November 2011:	10, 16, 22, 23, 20
December 2011:	7, 21, 23, 27, 28
January 2012:	12, 21, 23, 26, 27
February 2012:	24, 29
March 2012:	1, 3, 14, 17
April 2012:	2, 13, 23, 24
May 2012:	1, 8, 9, 10, 13
June 2012:	13, 14, 24, 26, 30
July 2012:	4, 5, 24, 29
August 2012:	13, 16, 18, 29
September 2012:	5, 9, 19, 23, 29
October 2012:	1, 3, 4, 8, 14, 15, 16, 30, 31
November 2012:	8, 9, 13, 14
December 2012:	8, 10, 17, 18, 27, 28, 30
January 2013:	16, 22, 29, 31
February 2013:	9, 20, 25, 27, 28
March 2013:	7, 8, 13, 19
April 2013:	1, 10, 11, 13, 20
May 2013:	9, 10, 12, 22, 24, 29, 30
June 2013:	3, 4, 8, 11, 12, 14, 18, 19, 28
July 2013:	26, 27
August 2013:	2, 3
September 2013:	3, 11, 13, 22
October 2013:	5, 6, 7, 8
November 2013:	18, 27
December 2013:	9, 18, 30

January 2014:	3, 6, 7, 12, 15
February 2014:	3, 5, 13, 14, 15, 18, 19, 20, 21
March 2014:	20
April 2014:	8, 12, 24
May 2014:	1, 11, 17, 23
June 2014:	4, 26, 27
July 2014:	4, 5, 8, 10, 16, 17, 24, 28, 29
August 2014:	8, 13, 14, 22
September 2014:	1, 7, 14, 22
October 2014:	1, 2, 5, 12, 17
November 2014:	2, 7, 14, 17, 18, 24, 27
December 2014:	3, 7, 17
January 2015:	3, 4, 18, 24, 27
February 2015:	2, 5, 8, 9, 14, 15, 21
March 2015:	3, 14, 17, 25, 27
April 2015:	6, 10, 21
May 2015:	29, 31
June 2015:	1, 2, 15, 21, 22, 24, 28, 29
July 2015:	2, 10, 31
August 2015:	5, 12, 19
September 2015:	10, 11, 12, 14, 30
October 2015:	1, 3, 29
November 2015:	11, 12, 19, 20

EXHIBIT B
TABLE OF J.P. ROURTHIER'S VIOLATIONS
November 30, 2010 to the present

<u>Type of Violation</u>	<u>Quarter</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
Failure to Prepare and Implement a SWPPP	n/a	n/a	November 30, 2010	Present
Failure to Submit NOI to be Covered by the Permit	n/a	n/a	November 30, 2010	Present
Failure to Ensure that Discharges Will Not Violate Water Quality Standards	n/a	n/a	November 30, 2010	Present
Failure to Implement Adequate Control Measures	All	COD	November 30, 2010	Present
Failure to Implement Adequate Control Measures	All	TSS	November 30, 2010	Present
Failure to Implement Adequate Control Measures	All	Aluminum	November 30, 2010	Present
Failure to Implement Adequate Control Measures	All	Iron	November 30, 2010	Present
Failure to Implement Adequate Control Measures	All	Lead	November 30, 2010	Present
Failure to Implement Adequate Control Measures	All	Zinc	November 30, 2010	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2010	All	December 31, 2010	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2010	All	January 31, 2011	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2011	All	March 31, 2011	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2011	All	April 30, 2011	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2011	All	June 30, 2011	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2011	All	July 31, 2011	Present
Failure to Conduct Benchmark Monitoring	July-Sep 2011	All	September 30, 2011	Present
Failure to Report Results of Benchmark Monitoring	July-Sep 2011	All	October 31, 2011	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2011	All	December 31, 2011	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2011	All	January 31, 2012	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2012	All	March 31, 2012	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2012	All	April 30, 2012	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2012	All	June 30, 2012	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2012	All	July 31, 2012	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2012	All	September 30, 2012	Present
Failure to Report Results of Benchmark Monitoring	Jul-Sep 2012	All	October 31, 2012	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2012	All	December 31, 2012	Present

Failure to Report Results of Benchmark Monitoring	Oct-Dec 2012	All	January 31, 2013	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2013	All	March 31, 2013	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2013	All	April 30, 2013	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2013	All	June 30, 2013	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2013	All	July 31, 2013	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2013	All	September 30, 2013	Present
Failure to Report Results of Benchmark Monitoring	July-Sep 2013	All	October 31, 2013	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2013	All	December 31, 2013	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2013	All	January 31, 2014	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2014	All	March 31, 2014	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2014	All	April 30, 2014	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2014	All	June 30, 2014	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2014	All	July 31, 2014	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2014	All	September 30, 2014	Present
Failure to Report Results of Benchmark Monitoring	July-Sep 2014	All	October 31, 2014	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2014	All	December 31, 2014	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2014	All	January 31, 2015	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2015	All	March 31, 2015	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2015	All	April 30, 2015	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2015	All	June 30, 2015	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2015	All	July 31, 2015	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2015	All	September 30, 2015	Present
Failure to Report Results of Benchmark Monitoring	Jul-Sep 2015	All	October 31, 2015	Present
Failure to Conduct Comprehensive Site Inspection	n/a	n/a	September 29, 2011	Present
Failure to Conduct Comprehensive Site Inspection	n/a	n/a	September 29, 2012	Present
Failure to Conduct Comprehensive Site Inspection	n/a	n/a	September 29, 2013	Present
Failure to Conduct Comprehensive Site Inspection	n/a	n/a	September 29, 2014	Present
Failure to Conduct Comprehensive Site Inspection	n/a	n/a	September 29, 2015	Present
Failure to Submit Annual Report	n/a	n/a	November 13, 2011	Present
Failure to Submit Annual Report	n/a	n/a	November 13, 2012	Present
Failure to Submit Annual Report	n/a	n/a	November 13, 2013	Present
Failure to Submit Annual Report	n/a	n/a	November 13, 2014	Present
Failure to Submit Annual Report	n/a	n/a	November 13, 2015	Present